

Howard P. Speicher

June 11, 2009

VIA E-MAIL and First Class Mail

Margaret Drury, City Clerk
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Lesley Porter Overlay District and re-zoning petition

Dear Ms. Drury:

I understand that a discussion of the petition for the Lesley Porter Overlay District will be on the City Council's agenda for discussion on Monday, June 15th. Please forward a copy of this letter to the City Council members for inclusion in their packages for that meeting to facilitate discussion of the zoning petition.

The residents of Oxford Courts Condominium have previously expressed that their concerns with certain aspects of the petition can be addressed by revisions to the petition. The purpose of this letter is to summarize succinctly the amendments that Oxford Courts seeks to the petition in order to properly address their concerns about undue impact of the proposed overlay district on their residences.

Given the close proximity of the two vacant lots, currently used for parking, that abut Oxford Courts, (the "Mt. Vernon parcels") my clients' main concerns have to do with bulk, height and setback of buildings that may be constructed on the Mt. Vernon parcels. Consequently, our most important

C. Michael Malm
William F. Griffin, Jr.
John G. Serino
Gary S. Matsko
Judith Ashton
John T. Lynch
Carol R. Cohen
Howard P. Speicher
Paul L. Feldman
Gary M. Feldman
George A. Hewett
Laurence M. Johnson
Kenneth J. Mickiewicz
Thomas S. Fitzpatrick
J. Gavin Cockfield
David Rapaport
Whitton E. Norris, III
Andrew D. Myers
Robert J. Galvin
John D. Chambliss
George L. Chimento
Thomas Frisardi
Marjorie Suisman
Samuel B. Moskowitz
Charles H. DeBevoise
Sam A. Mawn-Mahlau
Amy L. Fracassini
David M. Cogliano
Robert J. Diettrich
Avi M. Lev
Joshua S. Grossman
Neal J. Bingham
Rebecca L. Andrews
Laurie Alexander-Krom
Christopher J. Marino

Harold R. Davis, of Counsel
Julian J. D'Agostine, of Counsel

direct 617-589-3829 direct fax 617-305-3129
email hspeicher@davismalm.com

ONE BOSTON PLACE • BOSTON • MA 02108
617-367-2500 • fax 617-523-6215
www.davismalm.com

proposed amendments relate to the proposed maximum floor area ratio, height and minimum setbacks.

We believe the maximum F.A.R. should be 2.0, as proposed, but with no exemption for retail development; the maximum height should be 35 feet, which would allow for construction of a three story building with first floor retail; and the minimum setback facing Oxford Courts should be twenty feet. We have proposed other amendments that we believe clarify the intent of the Council and Lesley University, and are designed to avoid disagreements in the future about development that may be permitted on the Mt. Vernon parcels.

Specifically, we have proposed the following amendments and clarifications:

1. **F.A.R.** In Section 20.203.2, *Floor Area Ratio Limitations*, subsection 1.a., insert the word "educational" before "institutional" in the fifth line, so the sentence reads: "In calculating the gross floor area (GFA) permitted for a development consisting of educational institutional uses, . . ."

This is necessary to make the language consistent with the use of the same phrase in the previous paragraph and to make clear that the flexible F.A.R. provision is only for the benefit of educational institutional uses.

Dormitory prohibition and triggering of overlay district dimensional requirements.

Section 20.203.2.1.b should impose a prohibition on dormitory uses west of Massachusetts Avenue and should prohibit other development that does not comply with the overlay district's requirements if a special permit is issued for lots anywhere in the Overlay District. The provision should read as follows: "Any Special Permit issued by the Planning Board that includes development rights involving any of the lots located in the Lesley Porter Overlay District shall result in a prohibition on dormitory uses on the lots located westerly of Massachusetts Avenue, and shall result in a prohibition against development on the lots westerly of Massachusetts Avenue except in compliance with the dimensional provisions of the Lesley Porter Overlay District."

Retail uses. We propose to delete Section 20.203.2.2, which provides an exemption from maximum F.A.R. for retail uses on the ground floor, or, alternatively, we propose that the exemption be made applicable only to that part of the overlay district that lies easterly of Massachusetts Avenue.

2. **Height.** In Section 20.203.3.2, change "45 feet" to "35 feet". The proposed limitation of three stories is consistent with a height of thirty-five, not forty-five, feet. We note that, given the requirement that height be measured from mean grade, a maximum height of thirty-five feet will result in a height of approximately forty feet at the back of the Massachusetts Avenue sidewalk.

Additionally, in the same subsection, we propose to add the following sentence pertaining to rooftop equipment and structures: "HVAC equipment, elevator headhouses, chimneys, and **other equipment** or structures not intended for human occupancy and which are necessary for the operation of the building may be located on the roof, provided that such equipment and structures at least thirty feet from the edge of the roof, and are appropriately screened to lessen both noise and visual impact." This language, or other acceptable language to the same effect, is necessary to avoid any disputes regarding allowed height, and is in lieu of the general language in the ordinance exempting rooftop structures. We believe something of this nature is necessary in these circumstances, especially in light of the close proximity of residential uses.

3. **Setbacks.** Add the following to Section 20.203.4: "For lots located westerly of Massachusetts Avenue, side yard setbacks shall be no less than twenty feet for those side yards abutting a lot, all or the major portion of which is in a Residence district." Please note that the underlying zoning (Section 5.42) already requires a setback of 10 feet from residential districts. This is insufficient to protect the abutting dense residential use.
4. **Purpose.** In Section 20.202, *Purpose*, remove "low density" in third to last line, so that the sentence reads: ". . . where such development faces or abuts residential districts, . . ."
5. **Parking and loading.** In Section 20.203.5, insert the word "educational" before "institutional" in the first line, so that the sentence reads: "Parking and loading requirements for any educational institutional use . . ."
6. **Special Permit Criteria.** In addition to the criteria in Section 10.40, and the eight additional criteria listed in Section 20.203.7, we propose the following additional criteria be included as requirements for the approval of a special permit in the Lesley Porter Overlay District:
 9. A Traffic Mitigation Plan, as provided in Section 18.10, which may in addition require changes in traffic signalization and other roadway and/or traffic pattern modifications if determined necessary by any traffic study mandated by the Planning Board during the approval process; and a Construction Mitigation Plan, as provided in Section 18.20, shall be required as a condition of approval. In addition to the items listed in Section 18.20, such construction mitigation plan shall include: (a) a program for rodent control during construction; (b) a program to protect the structural integrity of Oxford Courts at 3, 5 and 7 Arlington Street, including pre-construction surveys to document existing conditions prior to construction, and installation of monitoring devices for the period during construction; (c) programs to monitor noise, dust, dirt, odor, and vibrations; (d) a program for traffic mitigation measures during construction, including provisions for worker parking, and temporary signal changes if necessary; and (e) schedules mandating hours and days during which construction may not occur.

Margaret Drury, City Clerk
June 11, 2009
Page 4

DAVIS MALM &
D'AGOSTINE P.C.
ATTORNEYS AT LAW

10. No special permit shall be approved absent demonstration by the applicant to the reasonable satisfaction of the special permit granting authority that existing sewer, water, drainage and other utility infrastructure is sufficient, or with proposed upgrades to be completed prior to construction will be sufficient, to service the proposed new building and properties adjacent to the Overlay District.

We look forward to a continued dialogue with the Council and with Lesley University concerning the proposed Lesley Porter Overlay District.

Very truly yours,



Howard P. Speicher

HPS/rb

cc: James J. Rafferty, Esq.
Beth Rubenstein, Assistant City Manager
Susan Brand, Esq.
Peter Cardellichio